

**Derogation Number
DER-Flora-2026-03**

**EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS) REGULATIONS, 2011
(S.I. No 477 of 2011)**

DEROGATION

Granted under Regulation 54A of the European Communities (Birds and Natural Habitats) Regulations 2011, hereinafter referred to as “the Habitats Regulations”.

The Minister for Housing, Local Government & Heritage, in exercise of the powers conferred on him by Regulation 54 of the Habitats Regulations hereby grants to **Jessica Burkitt, Conservation Ranger of Killarney National Park, Kenmare Road, Muckross, Killarney, County Kerry, V93 V673** a derogation. It is stated that this derogation is issued:

- A. For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants
- B. As there is no satisfactory alternative, and the action authorised by this derogation will not be detrimental to the maintenance of the population of flora referred to below at a favourable conservation status in their natural range.

This derogation authorises the following:

1. Disturbance
2. Actions authorised within the derogation

The derogation is issued in respect of the following **Flora species**:

- **Slender Naiad** ***Najas flexilis***



Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **Killarney National Park, Kenmare Road, Muckross, Killarney, County Kerry, V93 V673** for **Jessica Burkitt**
2. Special efforts should be taken to minimize disturbance to, and impacts on, any species of protected Flora during works.
3. This derogation may be modified or revoked, for stated reasons, at any time. In addition, the Minister reserves the right to revoke the derogation where updated information indicates that the basis upon which the derogation was granted has materially changed.
4. The mitigation measures outlined in the application report (**Supporting Information for an Application for Derogation under Regulation 54 & 54A of the European Communities (Birds and Natural Habitats) Regulations 2011 to test whether Slender Naiad (*Najas flexilis*) can be germinated ex-situ from lake sediment seed bank, Lough Leane, Killarney National Park**) together with any changes or clarification agreed in correspondence between NPWS and the agent or applicant, are to be carried out. Strict adherence must be paid to all the proposed measures in the application.
5. The actions which this derogation authorise shall be completed between **5th – 31st May 2026, inclusive**.
6. Special efforts should be taken to minimize disturbance to, and impacts on, any species of protected flora during works.
7. The derogation holder should carefully consult the NPWS Flora Protection Order Map Viewer – Bryophytes (<https://www.npws.ie/maps-and-data/flora-protection-order-map-viewer-bryophytes>), available on the NPWS website, to ensure that they are aware of the locations of the known populations of protected bryophyte species in order to avoid accidental disturbance. For protected vascular plants and charophytes the Flora (Protection) Order 2022 Map Viewer (<https://www.npws.ie/news/npws-flora-protection-order-2022-map-viewer-%E2%80%93-vascular-plants-charophytes-and-lichens-has-been>) should similarly be consulted.
8. Strict biosecurity measures should be applied following current best practice protocols (see, for example, <https://invasives.ie/biosecurity/check-clean-dry/>), for the purposes of preventing the introduction and spread of disease and alien species. All equipment should be appropriately treated before and after work and before moving to a new site.
9. If this derogation addresses works that are subject of a planning application, no such works permitted under this derogation can occur until planning permission is granted.
10. If this derogation expires prior to works permitted under this derogation commencing, a new application must be sought in advance, including the provision of any updated data or reports.
11. This derogation shall be produced for inspection on a request being made on that behalf by a member of An Garda Síochána or an authorised NPWS officer appointed under Regulation 4 of the Habitats Regulations.
12. On completion of the actions which this derogation authorises, all recordings of flora species affected will be made using the standardised Returns form and must be submitted to the NPWS **within four weeks of the expiry date of this derogation**. Included with the Returns form, a brief report describing works undertaken and details of any populations of protected plant species recorded should be provided to NPWS on expiry of the derogation.
 - Reports should include records of the protected species (species, location, grid references [10-figure, GPS-derived, National Grid], recorder/s, dates [day/month/year], size of populations recorded [area/number of plants], to be supplied also in MS Excel format) as well as details of any samples retained.

Both documents must be submitted to wildlife.reports@npws.gov.ie to constitute a derogation return.



For the Minister for Housing, Local Government & Heritage

Fiona O' Mahony.

(an officer authorised by the Minister to sign on his behalf)

05 May 2026

Any query in relation to this derogation should be sent to reg54derogations@npws.gov.ie



Derogation Assessment

Name of Applicant: Jessica Burkitt

Location/Name of Project: NPWS Killarney National Park Staff, Lough Leane seed collection.

Tick the following prohibition as chosen on the application:

(a) Deliberately capture or kill any specimen of the relevant species in the wild	<input type="checkbox"/>
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	<input type="checkbox"/>
(c) Deliberately take or destroy eggs of the relevant species in the wild	<input type="checkbox"/>
(d) Damage or destroy a breeding or resting place of such an animal, or	<input type="checkbox"/>
(e) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of the relevant species taken in the wild, other than those taken legally as referred to in Article 12(2) of the Habitats Directive.	<input type="checkbox"/>
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	<input checked="" type="checkbox"/>
(b) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 13(1)(b) of the Habitats Directive.	<input type="checkbox"/>

Test 1: A reason(s) listed in Regulation 54 (a)-(e) applies to the proposed activity

i. Tick which reason the applicant claims should be applied to the derogation

(a) In the interests of protecting wild flora and fauna and conserving natural habitats,	<input type="checkbox"/>
(b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property	<input type="checkbox"/>
(c) In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,	<input type="checkbox"/>
(d) For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants, or	<input checked="" type="checkbox"/>
(e) To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.	<input type="checkbox"/>



ii. Test 1: Conclusion

Please tick the following where it applies:

There is a valid reason(s) listed in Regulation 54 (a)-(e) which applies to the proposed activity:	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion:

The derogation is considered under Regulation 54(2)(a) to enable NPWS staff to collect sediment from Lough Leane, Killarney, Co. Kerry. This is to facilitate ex-situ propagation trials to improve the understanding of the germination requirements of Slender Naiad (*Najas flexilis*), and thus support the development of conservation measures. The derogation application form and associated supporting documentation provided by the applicant has been reviewed in full.

The aim of the pilot project to test whether *Najas flexilis* can be germinated ex-situ from lake sediment seed bank under controlled conditions, using methods that aim to minimise disturbance. It is a first step in investigating the feasibility of supporting the conservation of *N.flexilis* through seed bank propagation methods.

The success/failure of ex-situ propagation will inform future actions for the conservation management of *N.flexilis* in Killarney National Park and/or further attempts at ex-situ germination of *N.flexilis*. Evidence indicates the population of *N.flexilis* in Lough Leane, once likely to have been the largest in Ireland and, possibly, Europe, has collapsed in recent years. The project is aimed at conservation safeguarding of *N.flexilis*. Therefore project is aimed at supporting the conservation objectives for the species. The pilot project was proposed by Aine O'Connor, NPWS Lake Ecologist.

The EAU is of the opinion that this application meets the criteria to satisfy reason 54(2)(d). Based on the above, the application can now proceed to Test 2 |



Test 2: Absence of a satisfactory alternative

Please tick the following where it applies and add a comment below to support the recommendation:

The applicant has provided satisfactory evidence that alternative solutions have been considered and have given reasons why the proposed approach is the only satisfactory alternative:	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion (If you wish to add additional conditions please complete pg. 6):

Alternative solutions to the proposed approach have been considered by the applicant, and the evidence has been reviewed. The alternative solutions suggested by the applicant are:

1. **Alternative Scenario-Do nothing:** This option would result in no collection of sediment or seed material and would not support ex-situ propagation or conservation safeguarding of *N.flexilis* in Lough Leane which has recently seen a population collapse. Inaction would fail to contribute to restoring favourable conservation status. *N.flexilis* has experienced a documented decline in recent years (Article 17 report NPWS, 2025, Roden & O’Connor, 2024). There is currently limited understanding of the viability of its sediment seed bank and its potential role conservation and restoration. In the absence of this preliminary research, opportunities to inform evidence-based conservation action may be constrained. The do-nothing approach would fail to contribute to scientific knowledge and understanding of the species.
2. **Collect seeds from living plants:** Direct collection of *N.flexilis* seeds are impractical due to the very low abundance of the plant and the small size and inconspicuous nature of the seeds. Furthermore, targeted seed collection may require repeated searching and may result in the disturbance to an already vulnerable plant. In addition, there would be an uncertainty regarding the maturity of seeds collected directly from the plant, which may limit the effectiveness of this approach. In contrast, sediment sampling allows for the collection of a potential seed bank with minimal disturbance and provides a higher likelihood of capturing viable propagules. Sediment based collection is therefore a lower-impact and more practical method for achieving the objectives of the project.
3. **Collect seeds from area without known records of plants:** Sampling outside areas where *N.flexilis* is known to occur or has historically been recorded would reduce the likelihood of obtaining viable seed material and would not support successful propagation.
4. **Conduct surveys only:** Conducting a survey would only inform on the distribution and relative abundance of *N.flexilis*. This approach would not allow for the collection of potential seed bank and would not therefore not meet the objectives of the pilot

Based on the assessment of the application documentation, it is regarded that the applicant has considered the available alternative solutions and the proposed approach is the only satisfactory alternative. The EAU has concluded that the application has passed Test 2 and can proceed to Test 3.]

Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.



Test 3: Impact of a derogation on conservation status of the species

Please tick the following where it applies and add a comment below to support the recommendation:

The derogation would NOT be detrimental to the maintenance of the populations of the species in question at a favourable conservation status in their natural range.	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion. (If you wish to add additional conditions please complete pg. 6)

The current Conservation Status of Slender Naiad (*Najas flexilis*) is Bad – with a deteriorating trend (Article 17 Report, 2025) which is change from status of Inadequate with a declining trend in 2019 (Article 17 Report, 2019). A survey conducted in Lough Leane 2013 by Roden & Murphy found *N.flexilis* throughout the lake. The survey repeated in 2019 noted a significant decline in distribution and population size of *N.flexilis* with only five plants being recorded at a single location, Tomies Point.

However, the applicant has considered the potential impacts to *N.flexilis* including physical disturbance, sediment removal and increased turbidity. Best practice methodology and biosecurity protocols have been outlined in detail. For example:

- The collection of samples is due to take place between April and May (the exact date is to be determined and is weather dependent). *N.flexilis* typically germinates in June. By taking samples before the germination period disturbance to *N.flexilis* plants growing in-situ is expected to be avoided.
- The sediment removed for propagation will be small ; five litres per sampling location with one litre per sampling point within each sampling location representing twenty litres of sediment for the entire study.
- Increased turbidity will be localised and short lived so there will be no change to the water quality.

In summary, it is unlikely that the sampling will affect population viability, substrate quality, water quality or reproductive capacity within Lough Leane.

The EAU is of the opinion the proposed derogation would not be detrimental to the maintenance of the population of Slender Naiad at a favourable conservation status in their natural range

If the answer above is Yes then the derogation may be granted, providing Tests 1 and 2 have also been met.

Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.



Derogation decision

The application for a derogation under Regulation 54A of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), as amended, has been assessed by officials in the Department and the following decision has been made:

Tick box where appropriate:

There is no satisfactory alternative

and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range.

Therefore, a derogation may be granted to the applicant, since it is—

(a) in the interests of protecting wild fauna and flora and conserving natural habitats

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants, or

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.

OR This application has been refused as one or more of the conditions set out above have not been met



The following conditions should be attached to the derogation:

- 1.
- 2.
- 3.
- 4.

[add additional conditions where required]

Signed: *Raura Connelly*

Date:

Position: Ecologist